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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/014,154	12/06/2001	Richard T. Skiffington	0656-008US6	1022
32665	7590	05/12/2009	EXAMINER	
LESLIE MEYER-LEON, ESQ. c/o Bromberg & Sunstein LLP 125 Summer Street 11th Floor Boston, MA 02110-1618			BEISNER, WILLIAM H	
		ART UNIT	PAPER NUMBER	1797
		MAIL DATE	DELIVERY MODE	
		05/12/2009	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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Leslie Meyer-Leon, Esq.  
c/o Bromberg & Sunstein LLP  
125 Summer Street  
11<sup>th</sup> Floor  
Boston, MA 02110-1618

MAILED

MAY 12 2009

CENTRAL REEXAMINATION UNIT

In re Application of	:	
Richard Skiffington et al.	:	DECISION
Application No. 10/014,154	:	TERMINATING
Filed: December 6, 2001	:	REISSUE PROCEEDING
Atty. Docket No.: 0656-008US6	:	

This is a decision terminating the instant reissue proceeding by default based on (1) the expiration of U.S. patent 6,180,395, for which patent the present application requests reissue, and (2) the failure of applicants to respond to the Order to Show Cause mailed by the Office April 1, 2009.

#### BACKGROUND

1. Reissue application No. 10/014,154 ("the '154 reissue application") was filed on December 6, 2001, for reissue of U.S. Patent No. 6,180,395 ("the '395 patent") issued January 30, 2001.
2. The Image File Wrapper record for the '154 reissue application reveals that a Decision on Appeal was issued on October 30, 2008, and that the prosecution of the application had advanced to the point where the application was made available for the Technology Center to process it after the Board decision.
3. The Office's financial records reveal that the 7.5 year maintenance fee due by January 30, 2009 (the end of the maintenance fee grace period), was not paid.
4. The '395 patent expired at midnight on January 30, 2009, for failure to pay the 7.5 year maintenance fee that was due. <sup>1</sup> See: 1340 OG 162, 172 at <http://www.uspto.gov/web/offices/com/sol/og/2009/week12/TOC.htm#ref4>.
5. On April 1, 2009, an Order to Show Cause was mailed to applicants, setting a 30-day period for a response showing sufficient cause why the Office should not

<sup>1</sup> See: MPEP § 2506, third paragraph.

terminate the present reissue proceeding. The Order makes clear that a failure by applicants to respond to the show cause order within the set 30-day period will result in the termination of the present reissue proceeding by default.

6. No response to the April 1, 2009 Order to Show Cause has been received by the Office, and the 30-day period for response to the Order has expired.

## DECISION

As pointed out above, no response to the April 1, 2009 Order to Show Cause has been received by the Office, and the 30-day period for response to the Order has expired. In addition, there is no record of a petition addressing the failure to pay the 7.5 year maintenance fee, as would be required in order to reinstate the '395 patent.

When a patent has expired, the Director of the USPTO no longer has the authority under 35 U.S.C. 251 to reissue the patent. See *In re Morgan*, 990 F.2d 1230, 26 USPQ2d 1392 (Fed. Cir. 1993). As stated in *Morgan*,

"The language of section 251 is unambiguous: the Commissioner has authority to reissue a patent only 'for the unexpired part of the term of the original patent.' Thus, when Morgan's original patent expired on August 19, 1992, the Commissioner was divested of his reissue authority because there no longer was an unexpired term of the patent for which Morgan's patent could be reissued. Morgan's appeal thus became moot." [990 F.2d at 1231, 26 USPQ2d at 1393][emphasis added]

Since the '395 patent expired for failure to pay the requisite maintenance fee, and applicants have not provided any information to the contrary after being afforded an opportunity to do so, the instant reissue application is hereby terminated. Accordingly, the Technology Center is to proceed to hold the reissue application to be an abandoned application, and process the application accordingly.

## CONCLUSION

1. The present reissue application is hereby terminated.
2. Jurisdiction over the reissue application file is being forwarded to Technology Center Art Unit 1797 for processing the application as an abandoned application.
3. Telephone inquiries related to this decision should be directed to Raul Tamayo, Legal Advisor, at (571) 272-7728.



Kenneth M. Schor  
Senior Legal Advisor  
Office of Patent Legal Administration